No. 86-626

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

JOHN AND MACY TRENT,
Petitioners,

vs.

CODMAN AND SHURTLEFF, INC., DR. JOSEPH SCHLONSKY, ST. ANTHONY'S HOSPITAL, and JOHNSON AND JOHNSON, INC.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Petitioners state that the question on this Petition is:

> Whether Petitioners were denied due process of law under the Fourteenth Amendment to the United States Constitution when their Complaint was dismissed on the technicality that Defendent, Dr. Joseph Schlonsky, was not put on notice of the claims against him even though the original Complaint and three Amended Complaints,consisting of 177 paragraphs, setting forth each operation, were fully incorporated into each Amended Complaint, and filed within the one year statute of limitations period.

Respondent Joseph Schlonsky, M.D. asserts that Appellants' Petition raises the following additional questions:

1. Whether the Petition was brought in a timely fashion subsequent to dispositive entry of the Ohio Supreme Court.

2. Whether the issues in the case involve a substantial federal question.

3. Whether a federal question was ever raised in the state court proceedings and/or whether the state court based any part of its decision upon a determination of a federal question.

4. Whether the decision of the state court is supportable upon an adequate non federal basis.

5. Whether the questions brought to this Court are unsubstantial in character.

PARTIES

While the parties are those listed in the caption, it is asserted that only Respondent Joseph Schlonsky, M.D. has an interest in the issues brought herein and this brief is filed only on behalf of said Respondent.

Respondent Saint Anthony Medical Center (St. Anthony's Hospital), though represented by the same law firm presenting this brief on behalf of Dr. Schlonsky, specifically does not herein appear or offer argument on the basis that the issues contained herein have no applicability to Saint Anthony Medical Center.

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No. 86-626

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ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

RESPONDENTS' BRIEF IN OPPOSITION

JURISDICTION

Respondent denies that this Court has jurisdiction pursuant to Title 28 U.S.C. 1257 (3) for the reasons explained hereafter.

STATUTES AND RULES

In addition to the Ohio statutes and rules cited in Appellants' Petition, additional Ohio Rules are relevant:

Rule IX, Rules of Practice of the Supreme Court (Ohio)
Section 1. Motion for Rehearing
A motion for rehearing shall be filed within ten days after the announcement of the decision. Such motion must be confined strictly to the grounds urged for rehearing and must not constitute a reargument of the case. Notice of such motion shall be served on opposing counsel who shall have five days to file his memorandum contra.

Rule 26, Rules of Appellate Procedure (Ohio)
. . . The filing of an application for reconsideration does not extend the time for filing a notice of appeal in a court of appeals.

STATEMENT OF FACTS

On January 27, 1978, Defendant-Appellee Dr. Schlonsky performed total hip replacement surgery upon Plaintiffs-Appellants Mr. Trent's right hip.

Almost two years later, on December 6, 1979, Dr. Schlonsky performed total hip replacement surgery on Mr. Trent's left hip. This procedure was an entirely separate operation performed upon Mr. Trent's other hip and was not medically related to the earlier operation upon his right hip.

In January, 1980, the metal prosthesis implanted into Mr. Trent's right hip broke. In December, 1981, the prosthesis implanted into Mr. Trent's left hip also broke.

Although not named as a defendant in the original complaint filed November 13, 1981, Defendent-Appellee Dr. Schlonsky was joined as a defendant by Plaintiffs-Appellants, by their Third Amended Complaint, filed October 6, 1982.

STATEMENT OF THE CASE

On November 13, 1981, Plaintiffs-Appellants, Mr. and Mrs. John Trent, filed a Complaint in the Court of Common Pleas of Franklin County, Ohio, based upon two separate surgical procedures performed on Mr. Trent: a right total hip replacement arthroplasty performed on January 27, 1978, and a left total hip replacement arthroplasty performed on December 6, 1979. The Complaint was filed against the prosthesis distributor, Codman and Shurtleff and against the hospital, St. Anthony Medical Center.

Although not named a defendant in the original Complaint, Defendant-Appellee Dr. Schlonsky was joined as a defendant by Plaintiffs-Appellants by their Third Amended Complaint, filed October 6, 1982. The previous three complaints, contained no inference of surgeon negligence.

The Third Amended Complaint asserted that Dr. Schlonsky had been negligent in the manner that he surgically replaced the patient's right hip. No allegation was made in said Amended Complaint that Dr. Schlonsky was negligent in any fashion regarding the prosthesis implant in Mr. Trent's left hip. An allegation of surgeon negligence regarding the surgery on Mr. Trent's left hip was first made in Plaintiff-Appellants' Fourth Amended Complaint filed on February 9, 1983. Plaintiffs-Appellants went on to file two more amended complaints, but the issues raised therein are not a part of this appeal.

On August 10, 1983, Defendant-Appellee Schlonsky moved for summary judgment as to the malpractice claims of Mr. Trent asserted for both the right hip surgery and the subsequent left hip surgery, and as to one of the two consortium claims of Mrs. Trent. Dr. Schlonsky asserted that the malpractice claims were barred by the one-year statute of limitations accruing upon discovery of the injury, and that part of the malpractice claims were barred by the

four-year absolute termination provision of § 2305.11 (B) Ohio Revised Code. Defendant-Appellee further asserted that the relevant consortium claim was filed beyond the four-year statute of limitations applicable thereto.

By Judgment Entry of November 30, 1984, the trial court granted Defendant-Appellee Dr. Schlonsky's motion, finding that the consortium claim of Mrs. Trent at issue was time-barred, and finding further that both of Mr. Trent's malpractice claims were filed more than one year after the discovery of the injury. However, the trial court found that as to Mr. Trent's malpractice claim based on the right hip surgery, a factual question remained regarding the tolling of the statute of limitations on the grounds of fraudulent concealment and/or estoppel. Importantly, in considering Mr. Trent's malpractice claim based on the right hip surgery, the trial court failed to apply Defendant-Appellee's alternative basis for summary judgment—the four-year absolute bar of § 2305.11 (B) Ohio Revised Code — reasoning that this statute had been impliedly vacated or modified by *Oliver v. Kaiser Community Health Found,* 5 Ohio St. 3d 111, 449 N.E. 2d 438 (1983).

By Notice of Appeal, filed November 30, 1984 Plaintiffs-Appellants appealed from the trial court's grant of summary judgment in favor of Defendant-Appellee Dr. Schlonsky with respect to Mr. Trent's left hip claim and Mrs. Trent's right hip consortium claim. Appellants primary argument was that the allegation that Dr. Schlonsky' left hip replacement was negligently performed, as first asserted in their Fourth Amended Complaint "related back" to the date of filing of their Third Amended Complaint on October 6, 1982. Alternatively, Appellants argued that the Third Amended Complaint, which incorporated by reference the previous complaints, containing allegations of product liability as to the left hip prosthesis, somehow asserted surgical negligence as to the left hip implant through the incorporated language.

By Notice of Appeal filed December 13, 1984 Defendant-Appellee Dr. Schlonsky appealed from the trial court's finding that Mr. Trent's right hip claim survived summary judgment because of some notion of estoppel and fraudulent concealment, and the court's finding that the four-year absolute bar asserted by Defendant-Appellee Dr. Schlonsky was not applicable, both of which findings led to the trial court's failure to fully grant Defendant-Appellee Dr. Schlonsky's motion for summary judgment.

On December 19, 1984, Plaintiffs-Appellants (Cross-Appellees) filed a Motion to Dismiss the Appeal of Defendant-Appellee Dr. Schlonsky, based upon lack of jurisdiction. On December 31, Defendant-Appellee Dr. Schlonsky filed his Response in Opposition to Motion of Plaintiffs-Appellants to Dismiss the Appeal of Defendant-Appellee Dr. Schlonsky.

The Court of Appeals issued an opinion and entry on October 10, 1985, in which the Plaintiffs-Appellants' Motion to Dismiss the Cross-Appeals was sustained, the Plaintiffs-Appellants' first assignment of error regarding the left hip claim was overruled and the Plaintiffs-Appellants' second assignment of error regarding the right hip consortium claim was sustained in part and overruled in part. The Plaintiffs-Appellants subsequently filed a Notice of Appeal to the Ohio Supreme Court on November 8, 1985.

On March 5, 1986, the Ohio Supreme Court overruled Plaintiffs-Appellants' Motion to Certify the Record, thereby declining to hear the case. Plaintiffs-Appellants thereafter requested the Ohio Supreme Court to reconsider its order, but the Ohio Supreme Court, by entry of April 23, 1986, once again declined to hear the appeal. (Note that the date of April 23, 1986 differs from the date alleged in the appendix to Plaintiffs-Appellants' Petition for Writ of Certiorari of May 14. This Defendant-Appellee knows nothing about a third entry of May 14 and asserts said entry does not exist).

As can be seen from the trial court's decision and the opinion of the state's intermediate court of appeals, both attached to Plaintiffs-Appellants' Motion for Writ of Certiorari, as well as the Propositions of Law filed by Appellants to the Ohio Supreme Court specifying the questions brought to that tribunal, a copy of which is attached hereto, at no time in the state court proceedings did Plaintiffs-Appellants ever raise an issue of federal statutory law nor did they assert any violation of the United States Constitution.

LEGAL ARGUMENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

APPELLANTS' PETITION FOR WRIT OF CERTIORARI DOES NOT SPECIFICALLY ASSERT A JURISDICTIONAL GROUND, NOR WAS IT TIMELY ASSERTED.

Appellants allege jurisdiction of the United States Supreme Court by virtue of Title 28 U.S.C. § 1257 regarding reviews of decision from a state's highest court. According to such statute, review may be granted:

> "(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specifically set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States." Title 28 U.S.C. § 1257.

Obviouslv, no challenge to the validitv of any treaty or statute, federal or state, is made by Appellants. Apparently Appellants seek to enforce a "right. . . Specifically set up or claimed under the Constitution." Yet Appellants' argument cites no constitutional provision and directs the

Court's attention to no act violative of a constitutional provision. Appellants merely allege in their brief that, "Petitioners were denied due process of law when their Complaint was dismissed" (page 7, Motion for Writ of Certiorari), and "this Court should accept this case to undo a very great injustice" (page 11, Motion for Writ of Certiorari). Certainly a more specific challenge to violation of the Federal Constitution is necessary to raise jurisdiction under Title 28, U.S.C. § 1257.

But of even more interest is the timeliness of this Petition. Title 28, U.S.C. § 2101 (C) provides the time period for filing a Petition for Writ of Certiorari:

> "(C) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree."

The Ohio Supreme Court, by entry of March 5, 1986, overruled Appellants' Motion to Certify the Record of the intermediate court of appeals. Appellants had ninety days therefrom to file a petition or to obtain an extension of time. One or the other had to be achieved by June 3, 1986, ninety days after the March 5 entry. However, Appellants did not file their petition until October 10, 1986, and didn't even get an extension of time until July 25, 1986.

It is anticipated that Appellants will assert that their time period commenced to run on May 14, 1986, a date which, according to their appendix, the Ohio Supreme Court filed a Rehearing Entry denying further consideration of Appellants' Motion to Certify the Record. Ohio Supreme Court involvement in a civil action such as the present one is discretionary and is heard on the merits

only if a motion to certify the record is sustained. There is no provision in the rules of the Ohio Supreme Court for a reconsideration of that Court's determination not to hear an appeal. There is a provision of rehearing in Rule IX of the Ohio Rules of Practice of the Supreme Court which provides:

> "Section 1. Motion for Rehearing
> A motion of rehearing shall be filed within ten days after the announcement of the decision. Such motion must be confined strictly to the grounds urged for rehearing and must not constitute a reargument of the case. Notice of such motion shall be served on opposing counsel who shall have five days to file his memorandum contra."

The language of this rule indicates it is not available for a decision not to accept an appeal. Clearly it deals with a rehearing. In the instant case there was no original hearing, the case never having been accepted. The rule further indicates it must be filed within ten days of the Supreme Court's "decision ". Here, there was no decision. Since there is no such thing as a reconsideration of the Ohio Supreme Court's failure to certify the case, the document described as a rehearing entry in Appellants' Petition is not a document of legal meaning and cannot be the basis from which the ninety day period commences. The March 5 entry overruling certification is the order from which this Petition should have been made.

Yet even if Ohio permitted a procedure of reconsideration of Supreme Court failure to certify a case, Appellants would still have to appeal from the March 5, 1986, Supreme Court entry. The March 5, 1986, entry established the finality of judgment through the state court process. The later entry on reconsideration said no more than that the Ohio Supreme Court declined to think about the

case any more. Appellants bring to this Court the final judgment of the Ohio Courts, not the question of whether such final judgment might be reconsidered. While not binding upon the Ohio Supreme Court, The Ohio Rules of Appellate Procedure do state Ohio's policy regarding reconsideration:

> "Rule 26 Application for Reconsideration
>
> . . . The filing of an application for reconsideration does not extend the time for filing a notice of appeal in the court of appeals."

Appellants have offered no authority, nor has Appellee discovered any, supporting the notion that filing a motion for reconsideration of the Ohio Supreme Court's failure to consider a case (assuming there is a vehicle for such reconsideration) operates to extend the period in which a Petition for Writ of Certiorari must be filed in this Court.

Yet even more questionable is Appellants' timeliness if calculated from the date of rehearing entry. Though the appendix of Appellants' petition contains on page A1 a purported restatement of the Ohio Supreme Court's Rehearing Entry, such page is different from the copy of the Ohio Supreme Court's official document served upon this Appellee by reason of the date. While page A1 reflects a date of May 14, 1986, the document actually signed by Ohio Chief Justice Frank D. Celebrezze bears the date of April 23, 1986, as the date of entry. Using the April 23, 1986, date, Appellants would have a duty to file a Petition for Writ of Certiorari or obtain an extension therefore no later that July 22, 1986, ninety days thereafter. Mr. Chief Justice Berger did not grant Appellants an extension until July 25, 1986.

For all of the above reasons, the Petition for Writ of Certiorari was not timely brought and therefore must be denied.

II. THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED FOR FAILURE TO PRESENT ON ITS FACE A SUBSTANTIAL FEDERAL QUESTION.

A. For This Court To Grant A Writ Of Certiorari, There Must Appear A Substantial Federal Question.

For the United States Supreme Court to review the action of a state court of final resort, there must appear a substantial federal question. *Durley v. Mayo*, Fla, 1956, 76 S. Ct. 806, 351 U.S. 277, 100 L Ed 1178, rehearing denied 77 S. Ct. 22, 352 U.S. 859, 1 L Ed 2d 69; *Newsom v. Smyth*, Va, 1961, 81 S. Ct. 774, 365 U.S. 604, 5 L Ed 2d 803.

This case involves a string of amended complaints and their applicability to the Ohio statute of limitations. The case is decided upon the interpretation of the Ohio statute of limitations for medical malpractice; the effect under Ohio procedure of incorporation by reference of allegations in one amended complaint into another, and the relation back of an amended pleading to the date of filing of the original pursuant to the Ohio Civil Rules regarding relation back. No federal statute, treaty, or constitutional provision has any bearing upon these issues.

B. For This Court To Grant A Writ Of Certiorari It Must Be Demonstrated That A Substantial Federal Question Was Presented In The State Court.

For this Court to review the decision of the Ohio Supreme Court, it must be shown not only that the case involves a substantial federal question, but the federal question was presented and ruled upon by the state court.

Rule 17.1 (b) and (c) of the Supreme Court Rules permits the granting of certiorari to review a state court decision only where the state court has ruled upon a federal question. Absence of a showing upon the record that the state court decided a federal question removes jurisdiction from this Court; *Illinios v. Gates*, Ill, 1983, 103 S. Ct. 2317 rehearing denied 104 S. Ct. 33; *Webb v. Webb*, Ga, 1981, 101 S. Ct. 1889, 451 U.S. 493, 68 L Ed 2d 392; *Tacon v. State of Arizona*, Ariz, 1973, 93 S. Ct. 998, 410 U.S. 351, 35 L Ed 2d 346.

A review of the decision of the Ohio Court of Appeals found on page A33 of Appellants' appendix indicates that no federal questions and in particular no questions of due process were even presented to the intermediate court of appeal, let alone ruled upon. Since the Ohio Supreme Court declined to hear the case, the state courts, on the face of this record, never decided a federal question. Therefore, there is no basis for this appeal.

C. There Can Be No Intervention By The United States Supreme Court Where The Record Demonstrates That The State Court Acted Upon An Adequate Independent Non Federal Basis.

Even if a federal question had been presented below and ruled upon, this Court would still decline jurisdiction if there were a non federal basis for the state court's decision sufficient to sustain its position. See *Dixon v. Duffy*, Cal, 1951, 72 S. Ct. 10, 342 U.S. 33, 96 L Ed 46 and *Young v. Ragen*, Ill, 1949, 69 S. Ct. 1073, 337 U.S. 235, 93 L Ed 1333.

The questions decided by the Ohio courts in this case rested solely upon interpretation of the Ohio Civil Rules and the Ohio statutes of limitation. The "pleading technicality" mentioned in the Petition as the basis for the Ohio court's decision is, without argument, a reference to interpretation of Ohio Civil Procedure. The non federal

portion of the decisions by the Ohio courts were not only independent and adequate, they were the only basis for the court's ruling.

III. THE QUESTIONS RAISED IN APPELLANTS' PETITION FOR WRIT OF CERTIORARI ARE SO UNSUBSTANTIAL AS TO NOT MERIT RE-VIEW BY THIS COURT.

Rule 16.1 (c) of the Supreme Court Rules provides as a basis for dismissal of an appeal, and thus arguably a denial of a Writ of Certiorari, a demonstration that the issues raised are so unsubstantial as not to need further argument. While no doubt in the eves of the Appellants this case is very substantial, substantiality is measured not by the magnitude of importance to one plaintiff, but rather the significance of the legal issues debated herein.

The legal issues in this case involve the adequacy of pleading and clarity of notice to the defendant. By the record it appears Appellants filed some seven complaints including all the amendments and by Appellants' count they contained 177 separate paragraphs. Those 177 paragraphs didn't count the paragraphs worded to the effect "Plaintiff hereby incorporates all paragraphs in all preceding complaints." Appellants' basic contention is that somewhere amongst this barrage of allegations and incorporated allegations there must have been some assertion of physician negligence regarding the left hip made in a timely fashion.

This pleading morass is so atypical that a decision crafted by this Court to give remedy to Appellants would necessarily be applicable to cases involving at least two separate acts of independent negligence, involving at least multiple amended complaints wherein allegations of negligence are identified by applying the negligent assertions in one one complaint to acts alleged in another complaint. The deci-

sion to be so specialized as to be virtually inapplicable to any other case likely to be filed in any of our fifty states. As such, the questions are truly unsubstantial.

CONCLUSION

For the reasons that:

(1) This Petition was not timely filed;

(2) This case does not reveal that federal questions were raised or decided in the state court;

(3) The state court decision stands on adequate and independent grounds: and

(4) The questions brought to this Court for review are unsubstantial.

Appellants' Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Attorney for Respondent

CERTIFICATE OF SERVICE

This is to certify that three copies of the foregoing, Respondents' Brief in Opposition have been served upon petitioners, John and Mary Trent, by mailing such copies to the office of petitioners' counsel of record, Robert C. Paxton II, 88 East Broad Street, Suite 1590, Columbus, Ohio 43215, by U.S. Mail First Class postage prepaid, this day of November, 1986.

I further certify that all parties required to be served have been served.

MICHAEL J. RENNER
Attorney for Respondent
Dr. Joseph Schlonsky

APPENDIX A

THE SUPREME COURT OF OHIO
COLUMBUS

1986 TERM

To wit: March 5, 1986

John and Macy Trent *Appellant,*	:	
	:	Case No. 85-1890
v.	:	ENTRY
Codman and Shurtleff, Inc. et al., *Appellees.*	:	

Upon consideration of the motion for an order directing the Court of Appeals for Franklin County to certify its record it is ordered by the Court that said motion is overruled.

COSTS :

Motion Fee, $20.00, paid by Robert C. Paxton, II.

(s) Frank D. Celebrezze
FRANK D. CELEBREZZE
Chief Justice

I, James Wm. Kelly, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing order was correctly copied from the records of said Court, to wit, from the Journal of this Court.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Supreme Court, this date. . . . . .

JAMES WM. KELLY CLERK
(s)Sam F. Adkins DEPUTY

APPENDIX B

THE SUPREME COURT OF OHIO
COLUMBUS

1986 TERM

To wit: April 23, 1986

John and Macy Trent	:	Case No. 85-1890
Appellant,	:	
v.	:	REHEARING ENTRY
Codman and Shurtleff, Inc.	:	(Franklin County)
et al.,	:	
Appellees.	:	

It is ordered by the Court that rehearing in this case be, and the same is hereby, denied.

(s) Frank D. Celebrezze
FRANK D. CELEBREZZE
Chief Justice

I, James Wm. Kelly, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing order was correctly copied from the records of said Court, to wit, from the Journal.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Supreme Court, on this 23rd day of April, 1986.

JAMES WM. KELLY CLERK
(s)Daniel J. Crowley DEPUTY

APPENDIX C

IN THE SUPREME COURT OF OHIO

JOHN TRENT AND MACY TRENT :
Appellants, :

vs : Case No. 85-1890

CODMAN AND SHURTLEFF, INC., :
et al.,
Appellees :

MEMORANDUM IN SUPPORT OF CLAIMED JURISDICTION

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APPENDIX D

Rule 16. Motion to dismiss or affirm reply supplemental briefs

1. Within 30 days after receipt of the jurisdictional statement, unless the time is enlarged by the Court or a Justice thereof, or by the Clerk under the provisions of Rule 29.4, the appellee may file a motion to dismiss, or a motion to affirm. Where appropriate, a motion to affirm may be united in the alternative with a motion to dismiss, provided that a motion to affirm or dismiss shall not be joined with any other pleading. The Clerk shall not accept any motion so joined.

(a) The Court will receive a motion to dismiss an appeal on the ground that the appeal is not within this Court's jurisdiction, or because not taken in conformity with statute or with these Rules.

(b) The Court will receive a motion to dismiss an appeal from a state court on the ground that it does not present a substantial federal question; or that the federal question sought to be reviewed was not timely or properly raised and was not expressly passed on; or that the judgment rests on an adequate nonfederal basis.

(c) The Court will receive a motion to affirm the judgment sought to be reviewed on appeal from a federal court on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

APPENDIX E

PART V—JURISDICTION ON WRIT OF CERTIORARI

RULE 17. Considerations governing review on certiorari

.1 A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

APPENDIX F

RULES OF PRACTICE OF THE SUPREME COURT (OHIO)

RULE IX

MOTION FOR REHEARING AND ISSUANCE OF MANDATE

SECTION 1. Motion for Rehearing.

A motion for rehearing shall be filed within ten days after the announcement of the decision. Such motion must be confined strictly to the grounds urged for rehearing and must not constitute a reargument of the case. Notice of such motion shall be served on opposing counsel who shall have five days to file his memorandum contra.

SECTION 2. Issuance of Mandate.

Ten days after the announcement of a decision on the merits, unless a motion for rehearing is filed, the Clerk shall issue a mandate in conformity to the entry of the Court. If a motion for rehearing is filed and denied, the mandate shall issue at the same time as the decision on the motion for rehearing. No mandate shall issue on denial of a motion to certify or a motion for leave to appeal, or upon the sustaining of a motion to dismiss an appeal as one not involving a substantial constitutional question.

APPENDIX G

RULES OF APPELLATE PROCEDURE (OHIO)

Rule 26. Application for reconsideration

Application for reconsideration of any cause or motion submitted on appeal shall be made in writing before the judgment or order of the court has been approved by the court and filed by the court with the clerk for journalization or within ten days after the announcement of the court's decision, whichever is the later. The filing of an application for reconsideration does not extend the time for filing a notice of appeal in a court of appeals.

Parties opposing the application must answer in writing within ten days after the filing of the application. Copies of the application, brief, and opposing briefs shall be served as prescribed for the service and filing of briefs in the initial action. Oral arguments of an application for reconsideration shall not be permitted except at the request of the court.

(Amended, eff 7-1-75)

APPENDIX H

§ 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority excercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.

APPENDIX I

§ 2101. Supreme Court; time for appeal or certiorari; docketing; stay

(a) A direct appeal to the Supreme Court from any decision under sections 1252, 1253 and 2282 of this title, holding unconstitutional in whole or in part, any Act of Congress, shall be taken within thirty days after the entry of the interlocutory or final order, judgment or decree. The record shall be made up and the case docketed within sixty days from the time such appeal is taken under rules prescribed by the Supreme Court.

(b) Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a district court in any civil action, suit or proceedings, shall be taken within thirty days from the judgment, order or decree, appealed from, if interlocutory, and within sixty days if final.

(c) Any other appeal or writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.